

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5393 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

MAVJI SAMANT CHAVDA

Appearance:

MR HARDIK C RAWAL for Petitioner

MR DG CHAUHAN for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/10/1999

ORAL JUDGEMENT

Learned advocate Mr. Raval is appearing for the petitioner. Learned advocate Mr. Prajapati is appearing for the workman.

The facts of the present case, in short, are that the respondent workman was working with the corporation as conductor and he was discharged from service on 18.2.1986 without any fault on his part and without any

notice pay or retrenchment compensation in lieu of such notice. According to the respondent workman, on 9.1.1985, when he was working as conductor in ST Bus of Junagadh Ahmedabad route and there was no irregularity in the said bus; he was issuing the tickets to the passengers who has boarded from Vinchhia and he had issued tickets to about 15 to 17 within the distance of 2/3 kms after the bus had started from Vinchhia. While he was issuing the tickets to the passengers in this manner, bus was checked suddenly and the checking party made report and on the basis of the allegations made in the report of the checking party, chargesheet was issued to him. Thereafter, departmental inquiry was initiated against him and thereafter, the respondent was dismissed from service. Said dismissal order was challenged by the workman before the labour Court, Rajkot by filing reference no. 160 of 1987. The labour Court, under its judgment and award dated 17.12.1988, has directed the petitioner corporation to reinstate the respondent workman in service with full back wages from the date of dismissal till the date of his actual reinstatement in service with continuity of service. Said judgment and award has been challenged by the petitioner corporation before this Court by filing this petition.

This Court, while admitting this petition by issuing rule thereon, has not granted any interim relief against the reinstatement of the respondent workman. In so far as the back wages are concerned, this Court has stayed the same to the extent of 50% only.

The labour court has considered the evidence led before it and has come to the conclusion that the departmental inquiry held against the respondent was quite illegal and improper and, therefore, the order of dismissal from service based on such illegal and improper departmental inquiry was vitiated and as such, was bad in law and inoperative. The labour Court has, in paragraph 4 of the impugned award, considered in detail that the copies of certain documents which were asked by the workman and which were relied on by the corporation were not furnished to the respondent workman and in departmental inquiry, the passengers were not examined by the petitioner corporation save and except the reporting officer. The labour Court has come to the conclusion that the story of the workman is not disproved by the petitioner corporation by examining any passenger. So, it appears that the whole inquiry conducted was one sided, bias and illegal and that sufficient and proper opportunity was not given to the respondent workman. The labour court has also come to the conclusion that it is

the fundamental right of the delinquent workman to be supplied with the documents which were relied on by the authority before passing the impugned order of punishment and that the workman was also not given an opportunity of cross examining the passengers whose statements were recorded by the checking party and that the statement of the workman was also not recorded in his presence.

The petitioner corporation has produced relevant papers of inquiry as also the past record of the respondent workman before this Court. The labour court has granted reinstatement in service with full back wages and continuity of service only on the ground that the inquiry which was conducted against the respondent workman was illegal, improper and on that ground, the impugned order of punishment of dismissal was set aside by the labour court

I have perused the papers of inquiry as also the past record of the respondent workman produced by the petitioner corporation. I have also gone through the impugned award passed by the labour court. I have also heard the learned advocates for the parties.

Mr. Raval, the learned advocate appearing for the petitioner corporation has contended before this Court that the conclusion of the labour court in respect of the examination of the passengers is contrary to the settled legal position as per the ratio laid down by the Supreme Court in case of Ratan Sinh. In departmental proceedings and departmental inquiry, Evidence Act is not applicable and strict compliance of the law of evidence is not necessary and the disciplinary authority can rely upon the hear say evidence if it establish the nexus and credibility of the evidence. He has further contended that in so far as the non supply of the documents is concerned, it was already informed to the respondent workman to obtain necessary copies from the office of the competent authority and, therefore, the conclusion of the labour court is erroneous. Learned advocate appearing for the respondent workman has submitted that once, it is held that the departmental inquiry held against the workman was illegal, then, it would be for the employer to prove the charges levelled against the workman by leading evidence before the labour court. He has submitted that the petitioner corporation has not led any evidence before the labour court to prove the charges of misconduct levelled against the respondent workman. Therefore, according to him, the labour court was quite justified in arriving at such conclusions and the same should not be disturb by this Court while exercising the

powers under Article 226/227 of the Constitution of India.

I have considered the submissions made by advocates for both the sides. According to my opinion, the view of the labour court is little but technical and the approach is also casual to some extent. During the course of hearing, it was suggested to both the learned advocates that in view of the past record of the workman as also in view of the fact that this court has not stayed the reinstatement of the workman and has stayed the payment of back wages only to the extent of 50% alone and the balance of the back wags were already directed to be paid to the workman, present position of the workman should now not be disturbed. However, looking to the incident of collecting the fare and not issuing tickets to the passengers and also considering the decision of the Supreme Court in case of State of Haryana versus Ratan Singh reported in AIR 1977 SC 1512, remaining 50% of the back wages which have been stayed by this Court while admitting this petition should not be paid to him. Both the learned advocates have left the matter at the discretion of this Court. Therefore, taking into consideration all the facts and circumstances of the case and also in view of the ratio laid down by the apex court in case of State of Haryana vs. Ratan Singh and I have also considered the decision of the apex Court reported in AIR 1995 SC pg. 1053 and another decision of this Court reported in 1997 (2) GLH pg. 379. In the decision of this court as referred above in case of N.A.Vasava, has considered the said decision reported in AIR 1995 SC pg. 1053, and this Court has quoted the observations made by the apex Court in the decision of Surjit Ghosh, which reads as under:

"The Bank is a Nationalized bank and the money belongs to the public. A huge amount on this scale cannot be paid to any one for doing no work during this long period, just because the bank feels that it has lost confidence in the employee."

Therefore, in the present case also, the petitioner corporation is a public corporation and the money belongs to the public.

Therefore, I am of the opinion that it would be just and proper to confirm the impugned award of the labour court in so far as the reinstatement with continuity of service is concerned. In so far as the back wages are concerned, same is required to be modified

by withholding 50 per cent of the back wages.

In the above premises, I pass the following order:

This petition is partly allowed. The impugned judgment and award shall stand confirmed in so far as the reinstatement of the respondent workman as directed by the labour court is concerned. The impugned judgment and award passed by the labour court is modified in so far as the back wages part is concerned. The direction of the labour court to pay the full back wages to the respondent is modified by directing the petitioner corporation to pay only 50 per cent of the back wages to the respondent workman in terms of the order passed by this Court while admitting this petition. The impugned award passed by the labour court shall stand modified accordingly. Rule is made absolute to the above extent with no order as to costs. Since I have modified the impugned award in aforesaid terms, it would be just and proper to direct the petitioner corporation to pay the 50% of the back wages to the respondent workman as expeditiously as possible preferably within three months from the date of receipt of certified copy of this order if it has not been paid so far.

8.10.1999. (H.K.Rathod,J.)

Vyas